

NTSB Order No. EA-4193

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of June, 1994

Respondent .

Docket SE-12797

## 6360

November 12, 1990, respondent served as an airman aboard an aircraft carrying cocaine from the Bahamas to Florida, and that respondent and his co-conspirators intended to distribute the cocaine, all in violation of Federal criminal law and for which revocation is required pursuant to 49 U.S.C. App. 1429(c)(2).

Respondent's October 14, 1992 answer to the complaint stated that he was "in agreement with all allegations and charges contained in the order of revocation." Respondent admitted using an aircraft in the offense, and expressed remorse for his actions.

In response to this answer, the Administrator moved for summary judgment. Respondent objected, arguing that, since the filing of his answer, he had filed a motion to withdraw his plea agreement in the criminal case and, therefore, summary judgment in this case should be denied.<sup>2</sup> The law judge granted the Administrator's motion for summary judgment, and it is respondent's appeal of that order that is before us.

We have carefully reviewed all the filings in this case (as contained in our official docket), and can find no basis to grant respondent's appeal. As the Administrator notes, regardless of respondent's motion before the Federal district court, he has not recanted his statements before this Board, viz., his admission of the allegations in the Administrator's complaint. Equally important, in the motion filed with the district court we also

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<sup>2</sup>See "Brief in support of verified motion to vacate judgment and request for hearing." The district court has denied this motion and he has appealed to the 11th Circuit Court of Appeals.

see no recanting of any prior statements, nor do we see reasons in that motion why we should ignore respondent's admissions in the case before us. Respondent's motion discusses at length the principle that a court should permit withdrawal of a plea if a defendant is misled by his attorney or the government has not fulfilled its part of an agreement. Respondent, however, fails to identify any specific facts supporting withdrawal of his plea or vacation of the prior judgment so that, if it were appropriate, we might consider these facts in this proceeding. He states only that the plea agreement has not been followed by the government or the court.<sup>3</sup> With this lack of information, we can find no grounds to ignore or discount respondent's earlier admissions in this forum.<sup>4</sup>

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<sup>3</sup>Contrary to respondent's statement, we see no "undisputed facts" showing that he is innocent.

<sup>4</sup>And, although respondent may have been convicted only of conspiracy to possess with intent to distribute cocaine and not all the matters alleged in the Administrator's complaint, his answer in this proceeding admitted all the "allegations and charges," i.e., that he had served as an airman on a flight carrying drugs into the U.S. and that this violated various Federal laws and subjected him to imprisonment for over 1 year. The legislative history (see Reply at 4) indicates clearly that the Administrator may proceed with revocation prior to the completion of any judicial proceeding.

The Administrator posits that, if respondent is acquitted on appeal, the revocation order would be withdrawn. We do not reach that issue here.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the date of service of this order.<sup>5</sup>

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>5</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).